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JUN 12 1963
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 102

LOCAL UNION No. 721, UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO,
Petitioner,

vs.

NEEDHAM PACKING COMPANY, d/b/a SIOUX CITY DRESSED BEEF, A CORPORATION,
Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION.

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June 11, 1963.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 996.

LOCAL UNION No. 721, UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO,

Petitioner,

vs.

NEEDHAM PACKING COMPANY, d/b/a SIOUX CITY DRESSED BEEF, A CORPORATION,

Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION.

This Reply is filed to Respondent's Brief in Opposition, which contends (a) that the judgment sought to be reviewed is not final, and (b) that the decision below correctly adjudicates the questions of Federal law raised.

I.

The Judgment Below Is Final and Complete, and Federal Labor Policy Requires Immediate Review.

The judgment of the Iowa Supreme Court is final and complete in every respect insofar as Petitioner's right to compel arbitration is concerned. It holds that Petitioner "waived" its right to arbitrate and thus cannot compel

arbitration. The Iowa courts have thus determined the entire controversy as to Petitioner's right to compel arbitration under Section 301(a) of the Labor-Management Relations Act (29 U. S. C. Sec. 185(a)).

To be sure, the Iowa Supreme Court remanded the case for further proceedings, but the only matter pending in the Iowa courts is Respondent's counterclaim. Respondent asserts that Petitioner should await trial of that counterclaim before seeking review of the Iowa Supreme Court decision in this Court. This position, if adhered to, would cripple the policy of the Federal labor laws favoring arbitration as the optimum means of settling disputes under collective bargaining agreements.

1. This Court has repeatedly held that the policy of the Federal labor laws requires that the arbitrator, and not a court, must hear and determine the merits of grievances which the parties have agreed to submit to arbitration. *Steelworkers* v. *American Manufacturing Company*, 363 U. S. 564 (1960). By contending that Petitioner should await trial of the counterclaim (because the same issues are said to be involved in both the complaint and the counterclaim), Respondent is saying nothing more than that, where a counterclaim is filed in a suit to compel arbitration under Section 301(a), the court, under the guise of trying the counterclaim, may examine the merits of the grievance.

Moreover, if Respondent's position were correct, an employer would need only devise some form of counterclaim alleging the facts of the grievance in order to embroil a complaint to compel arbitration in years of involved litigation. The counterclaim, in Respondent's view, justifies the court in hearing the merits. The arbitrator, if he ever heard the grievance, would have to wait until the courts had adjudicated the counterclaim.

2. If Petitioner's right to relief depended upon defeating the counterclaim, there might be some reasonable basis for Respondent's position. But Petitioner's right to relief exists independently of the counterclaim. Petitioner is entitled to arbitration even though it might lose the counterclaim. This Respondent's argument fails to recognize. Moreover, Respondent incorrectly assumes, as did the Iowa Supreme Court, that a finding—by a court—that the employees technically violated the no-strike clause necessarily constitutes a determination that the Union had no right to arbitrate. The assumption is not warranted.

There are more issues involved in the grievance than simply the question of whether the employees violated the agreement. Even if violation were found, it would still be necessary to decide whether discharge was an appropriate penalty. This is a matter for the arbitrator, not the court. *International Moulders* v. *Susquehanna Casting Co.*, 283 F. 2d 80, 81 (C.A. 3d 1960).

3. Respondent's basis for contending that the case is not ripe for review is a claim that the counterclaim raises the same issues as the complaint. Thus Respondent's contention is simply that, many months or years hence, if it loses on the trial of the counterclaim in both the trial court and the Iowa Supreme Court, Petitioner might again seek review in this Court. And, in addition, the argument goes, if Petitioner prevails on trial of the counterclaim by securing a finding that the employees did not violate the agreement by the alleged walkout, Petitioner might have "persuasive grounds" for moving for a new trial of the original complaint. Respondent wants to litigate first and then, if it loses, possibly go to arbitration. Although seriously proposed, the suggestion, in the context of this Court's decisions, is all but ludicrous.

4. Furthermore, if Respondent should decide at some time in the future to abandon its counterclaim, it would leave Petitioner completely without the only remedy which Respondent contends is proper. The right to compel arbitration under Section 301(a) of the Labor-Management Relations Act should not be at hazard in an exercise in legal gamesmanship.

II.

Respondent's Argument On the Merits Is Largely Based Upon Matters Outside the Record.

Only one facet of Respondent's argument on the merits —its characterization of the alleged strike—need be discussed. While the effects of any alleged strike are for the arbitrator, and not a court, to determine, Petitioner believes it important to point out that Respondent's statements as to the length of the claimed strike, and thus a substantial part of its argument, are based upon matters *dehors* the record.

In Respondent's Brief, reference is made to an alleged "prolonged strike", one which assertedly "is still going on". An attempt is even made to distinguish *International Moulders* v. *Susquehanna Casting Co.*, 283 F. 2d 80 (C.A. 3d 1960), which is clearly in point, on the basis, at least in part, of the duration of the strikes. On this view, a "short" strike would not bar arbitration, while a "prolonged" one would.

Respondent's claim is totally without support in the record. At no point is there either an admission or an undenied allegation as to the duration of the asserted strike. Respondent's allegations as to the length of the strike (R. 44) are specifically denied by Petitioner (R. 49). As Justice Thornton, dissenting, noted (Pet. App. p. 17):

> "The pleadings in this case should not be construed to hold that a violation of the no-strike clause is admitted or stands undenied."

While the Iowa Supreme Court's opinion does say (Pet. App. p. 12) that the employees walked out and are still refusing to return to their jobs, this is no more than a gratuitous observation based upon no evidence whatever.

Further, Respondent's Brief mentions an alleged refusal by the employees to return to work on May 15, 1961 and the asserted treatment by Respondent of such refusal as the termination of employment of the employees—in other words, as tantamount to discharge. Thus, even on Respondent's own theory of the events, the alleged strike could only have lasted at most for four days—from May 11 to May 15. Following the latter date, the employees could not have been on strike; whatever picketing may have occurred thereafter could only have been to protest the discharges.

All such matters, of course, relate to the merits, or lack of merits, of the grievances. The arbitrator should hear them, not this Court or the Iowa courts.

Conclusion.

For the reasons urged in the Petition and in this Reply, Petitioner prays that the Petition be granted.

Respectfully submitted,

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